

Did You Know?

Your Holding Company can sell its subsidiaries tax free?



A participation exemption on capital gains tax (CGT) is available to Irish resident companies on the disposal of a shareholding interest if a number of conditions are met. In this article we refer to the company whose shares are being disposed of as the 'investee company' while the company making the disposal is referred to as the 'investor company'. This relief can be very valuable to holding companies and here we outline a number of the key conditions for the participation exemption to apply to a disposal of shares.

Shareholding requirement

The investor company (i.e. the holding company) must hold at least 5% of the shares in the investee company for a continuous period of at least 12 months at any time within the two years prior to the disposal. The investor company should be entitled to at least 5% of the profits available for distribution to equity holders in the investee company and be beneficially entitled to at least 5% of the assets of the investee company available for distribution to equity holders.

If the Irish holding company is unable to meet the minimum holding requirement but is a member of a group (that is, a parent company and its 51% worldwide subsidiaries), the gain arising on the disposal should still be exempt if the holding requirement can be met by including holdings of other members of the group. Thus, the Irish company may be exempt from capital gains tax on a disposal of shares even if it does not directly hold a significant shareholding.

Residence requirement

The investee company must be tax resident in either an EU member state (including Ireland) or in a country with which Ireland has a Double Taxation Agreement.

Trading requirement

The investee company's business must consist wholly or mainly of the carrying on of a trade or trades, or in the case of group the activities of the group companies taken together as a whole consists wholly or mainly of carrying on a trade or trades.

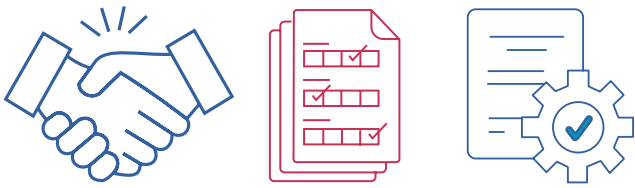
Wholly or mainly trading definition:

The Irish tax legislation does not define what is meant by "wholly or mainly" carrying on a trade. Revenue have stated that "wholly or mainly" means greater than 50% and that the primary tests to be applied are to net trading profits and net trading assets. Other matters, including the amount of employee time being devoted to the trading activity may also be relevant.





The exemption may apply to a disposal of assets related to shares, such as options and convertible debt, but will not apply to the disposal of either shares or related assets that derive the greater part of their value from Irish real property or Irish situated minerals or mining rights or on the disposal of shares that derive their value or the greater part of their value from exploration and exploitation rights of the sea bed and subsoil in the State or the Continental Shelf.



Other points to note

In assessing whether the exemption conditions are met, it should be noted that

- The Participation Exemption applies automatically if relevant conditions for the relief are met;
- If a loss is incurred by an investor company and the conditions for the exemption are met, then there is no relief for the loss on the basis that had there been a gain, it would not be taxable;
- The investor company does not need to hold its entire shareholding for the minimum period of 12 months, the disposal of shares will be exempt so long as it hold 5% of the shares for that period;
- The investor company does not need to dispose of its entire shareholding to obtain the tax exemption, once the prescribed holding requirements are met, the gain arising on any piecemeal disposal will be exempt;
- On liquidation, a liability to CGT may arise on the disposal of assets by the liquidator. However, gains and losses that arise on liquidation are deemed to be gains or losses of the company. As such, the exemption from CGT on a disposal should also apply where the necessary conditions are met and provided the company is wholly or mainly carrying on a trade up to the point of liquidation.

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Any questions?

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